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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 508

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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October 14, 1964.

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PRELIMINARY STATEMENT

This case presents no issue of national importance, but rather relates only to a very small dispute which arose in the course of everyday operation of respondent's railroad. The District Court heard the evidence and found that the petitioners had not proceeded in conformity with the clearly delineated statutory steps which are prerequisite to a strike in the railroad industry. The findings of fact and conclusions of law of the District Court were unanimously affirmed by the Court of Appeals for the 7th Circuit. The decision of the Court of Appeals is in conformity with deci-

sions of other Courts of Appeals in similar cases. The petition for writ of certiorari presented to this court is, in fact, a plea that this court alter the established interpretation of the Railway Labor Act as already enunciated by this court, and as uniformly applied by the Courts of Appeals.

QUESTION PRESENTED

The only question really presented by this appeal is whether there should be established a third category of disputes within the purview of the Railway Labor Act, 45 U.S.C.A. § 151 et seq., in which the law of the jungle is to replace the orderly procedures heretofore applied under the classifications "major" and "minor" disputes, creation of which third class of disputes would inevitably result in repeated paralyzing strikes in an industry recognized as being vital to the public interest.

STATEMENT OF THE CASE

The brief of petitioners contains, under a number of the headings thereof, a presentation of petitioners' interpretation of the facts. Rather than attempt to correct the various distortions and misstatements, we respectfully refer the court to the opinion of the Court of Appeals for the 7th Circuit which is included in Appendix A to the petitioners' brief herein, beginning at page 19, which sets forth the facts of the case. Basically, although petitioners changed their position several times in the course of the dispute, the record discloses that the differences between the parties were handled informally, no notice of the nature required to create a "major" dispute having ever been served by either party. This is the basis of the holding below that a strike would be unlawful and should therefore be enjoined.

ARGUMENT

I.

This Case Does Not Present A Question Which Should Be Reviewed By This Court.

Rule 19 of the revised rules of the Supreme Court of the United States sets forth the considerations concerning the review on certiorari, in pertinent part as follows:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) * * *
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.
>
> 2. * * *".

The court will note that the petition herein does not attempt to present a claim that the decision below is in conflict with the decision of another Court of Appeals, or that the decision of the court below is in conflict with one or more decisions of this court. As a matter of fact, none of the

stated causes for granting of review are present in this case. As we indicate hereafter, the decision of this court in the case of *Elgin, J. & E. R. Co.* v. *Burley,* 325 U.S. 711, clearly recognizes that the Railway Labor Act, 45 U.S.C.A. § 151, et seq., established two types of disputes in the railroad industry, these being commonly referred to as "major" disputes, or "Section 6" disputes, which may ultimately lead to a strike, and all other disputes, classified as "minor" disputes, for which the remedy of a strike is not available.

Mr. Justice Frankfurter, in the course of his dissent to *Ferguson* v. *Moore-McCormack Lines,* 352 U.S. 521, beginning at 524, has very ably and exhaustively reviewed the considerations bearing upon the granting or denial of the writ of certiorari in this court. This court is well aware of the criteria applicable to consideration of petitions for writs of certiorari, and accordingly we will not elaborate further on this subject. We do earnestly submit that this case presents nothing but a request that this court read into the statute something that is not there, which would in application work to the public detriment by making practically every dispute the cause for an immediate strike. If the contention of petitioners is that the courts below have made incorrect factual findings from the evidence, which may account for the emphasis on facts rather than law in the brief of petitioners, then in such case we submit that review of the facts is not a function of this court, faced as it is with its heavy docket of cases involving grave constitutional questions and matters of national importance.

Four federal court judges have considered this case, and have unanimously held against the contentions of petitioners.

Accordingly, there being no valid cause for review of this case, we respectfully submit that the petition for writ of certiorari should be denied.

II.

The Judgment Entered Below Is Proper.

Since 1945, in its decision in *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, this court has held that there are two classes of disputes encompassing all disputes within the scope of the Railway Labor Act. In that case, this court said (pp. 722-724):

> "The statute first marks the distinction in § 2, which states as among the Act's five general purposes: '(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.' The two sorts of dispute are sharply distinguished, though there are points of common treatment. Nevertheless, it is clear from the Act itself, from the history of railway labor disputes and from the legislative history of the various statutes which have dealt with them, that Congress has drawn major lines of difference between the two classes of controversy.
>
> "The first relates to disputes over the formation of collective agreements or efforts to secure them. *They arise where there is no such agreement or where it is sought to change the terms of one,* and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.
>
> "The second class, * * * The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation *or to an omitted case.* In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement * * *.

> *"In general the difference is between what are regarded traditionally as the major and the minor disputes of the railway labor world.* The former present the large issues about which strikes ordinarily arise with the consequent interruptions of traffic the Act sought to avoid. * * *
>
> "The so-called minor disputes, on the other hand, involving grievances, affect the smaller differences which inevitably appear in the carrying out of major agreements and policies or arise incidentally in the course of an employment. They represent specific maladjustments of a detailed or individual quality. *They seldom produce strikes, though in exaggerated instances they may do so.* Because of their comparatively minor character and the general improbability of their causing interruption of peaceful relations and of traffic, the 1934 Act sets them apart from the major disputes and provides for very different treatment." (Emphasis supplied)

The *Burley* case has stood as the landmark in defining the tests to be applied in the categorization of railroad labor disputes. No contrary decision of this court has appeared, and no inconsistencies in the decisions of the Courts of Appeals have developed. Indeed, the lower courts have consistently applied the doctrine of the *Burley* case on repeated occasions. See *Rutland Railway Corp.* v. *Brotherhood of Locomotive Eng.*, 2 Cir., 307 F.2d, 21, 30-31, certiorari denied 372 U.S. 954; *Norfolk & P.B.L. R. Co.* v. *Brotherhood of Rail. Train.*, 4 Cir., 248 F.2d 34, 39-40, certiorari denied 355 U.S. 914; *St. Louis S.F. & T. Ry. Co.* v. *Railroad Yardmasters of America*, 5 Cir., 328 F.2d 749, 752-753; and *Hilbert* v. *Pennsylvania RR Co.*, 7 Cir., 290 F.2d 881, certiorari denied 368 U.S. 900.

In the case at bar, the petitioners did not follow the procedure specified for seeking a new agreement by serving a formal notice as required by Section 6 of the Railway

Labor Act. Although the initial position of the petitioners was that the proposed changes could not be made without the railroad first securing an agreement, they later conceded the respondent railroad was doing what it had an admitted right to do. The petitioners now say that they desire that a new agreement be made. This position, however, was made for the first time when the case was before the Court of Appeals, which court, in its opinion, commented upon the tardiness of the change of position. In this case, as in the case of *Norfolk & P.B.L. R. Co.* v. *Brotherhood of Rail. Train.*, 4 Cir., 248 F.2d 34, the unions, for reasons of their own, chose not to follow the procedures established by the Railway Labor Act for the handling of "major" disputes. In both instances the unions eventually admitted that the railroad had the right to effect the changes involved.

It is earnestly submitted that the Courts of Appeals have correctly followed the guidelines of this court in interpreting the Railway Labor Act, and that there is nothing to indicate that a contrary interpretation should be made. The Railway Labor Act, as correctly interpreted in the *Burley* case, and the many cases following it, provides a clear dichotomy of classification of railroad labor disputes, which is easily understood by all involved and which looks toward an orderly handling of disputes. A dispute of such serious nature that a strike may result is clearly identified as such by the service of a formal notice as required by Section 6. The other disputes, considered less serious in nature, are not allowed to result in a crippling strike. To adopt the contention of petitioners in this case that there is another class of situation, in which a strike can result although the Section 6, or "major" disputes procedure has not been followed, would desecrate the noble purpose of the Railway Labor Act to promote certainty in this vital industry and avoid a rash of unexpected work stoppages. The purpose

of the Congress is clearly reflected in the *Burley* decision.

The *Burley* case recognizes two clearly defined categories of dispute, which is necessitated by the plain language of the Railway Labor Act. This case presents a correct application of the holding of this court in *Burley*, and the judgment below should therefore be affirmed.

Conclusion

This court has interpreted the Railway Labor Act correctly, and the various courts of appeals have been uniform in their application of this court's holding. This case presents a situation wherein the established, orderly, and well-known procedures for creating what is commonly described as a "major" dispute were not followed by petitioners. Accordingly, the holdings of the courts below that the right to strike in a situation coming within the purview of the Railway Labor Act is contingent upon exhausting the procedures therein set forth, beginning with the written notice required by Section 6, are correct and should be affirmed in this court.

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October 14, 1964.

Certificate of Service

I certify one copy of the foregoing respondent's brief in opposition to writ of certiorari has been air-mailed on the 13th day of October, 1964, to each of petitioner's attorneys: Harold C. Heiss, Russell B. Day, Keith Building, Cleveland 15, Ohio, Harold N. McLaughlin, Union Commerce Building, Cleveland 14, Ohio, V. C. Shuttleworth, Harry Wilmarth, Merchants National Bank Building, Cedar Rapids, Iowa, Burke Williamson, Jack A. Williamson, 39 South La Salle Street, Chicago 3, Illinois.

John W. Foster